

AMENDED IN SENATE AUGUST 11, 1998  
AMENDED IN SENATE JULY 27, 1998  
AMENDED IN SENATE JULY 9, 1998  
AMENDED IN SENATE JUNE 23, 1998  
AMENDED IN SENATE JUNE 10, 1998  
AMENDED IN SENATE MAY 21, 1998  
AMENDED IN ASSEMBLY JANUARY 15, 1998  
AMENDED IN ASSEMBLY JANUARY 8, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1392**

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**Introduced by Assembly Member Scott**  
**(Coauthor: Assembly Member Hertzberg)**  
(Coauthors: Senators Peace and Schiff)

February 28, 1997

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An act to amend Section 44237 of the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 1392, as amended, Scott. School employees.

Existing law prohibits a person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level from employing a person who has been convicted of a violent or serious felony, as defined. Existing law requires the

Commission on Teacher Credentialing to deny an application for the issuance of a credential made by an applicant who has been convicted of a violent or serious felony, as defined, a sex offense, as defined, and a controlled substance offense, as defined.

This bill would additionally prohibit a person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level from employing a person who would be prohibited from employment by a public school district by the provisions of the Education Code because of his or her conviction for any crime. The bill would prohibit a person who would be prohibited from employment by a public school district, because of his or her conviction for any crime, from owning or operating a private school that offers elementary or high school instruction on or after July 1, 1999. *The bill would exempt a parent or legal guardian working exclusively with his or her child or children.*

This bill would incorporate changes in Section 44237 of the Education Code proposed by AB 2102, to be operative only if AB 2102 and this bill are enacted and become effective on or before January 1, 1999, and this bill is enacted last.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 44237 of the Education Code is  
2 amended to read:  
3 44237. (a) Every person, firm, association,  
4 partnership, or corporation offering or conducting  
5 private school instruction on the elementary or high  
6 school level shall require each applicant for employment  
7 in a position requiring contact with minor pupils who  
8 does not possess a valid California state teaching  
9 credential, or is not currently licensed by another state  
10 agency that requires a criminal record summary, to  
11 submit two sets of fingerprints to the Department of  
12 Justice for the purpose of obtaining a criminal record



1 summary from the Department of Justice and the  
2 Federal Bureau of Investigation.

3 (b) (1) As used in this section, “employer” means  
4 every person, firm, association, partnership, or  
5 corporation offering or conducting private school  
6 instruction on the elementary or high school level.

7 (2) This section does not apply to a parent or legal  
8 ~~guardian working with his or her child in a home study~~  
9 ~~program.~~ *guardian working exclusively with his or her*  
10 *child or children.*

11 (c) (1) Upon receiving the identification cards, the  
12 Department of Justice shall ascertain whether the  
13 applicant has been arrested or convicted of any crime  
14 insofar as that fact can be ascertained from information  
15 available to the department and forward the information  
16 to the employer designated by the applicant submitting  
17 the fingerprints no more than 15 working days after  
18 receiving the identification cards. The Department of  
19 Justice shall not forward records of criminal proceedings  
20 that did not result in a conviction but shall forward  
21 information on arrests pending adjudication.

22 (2) Upon implementation of an electronic  
23 fingerprinting system with terminals located statewide  
24 and managed by the Department of Justice, the  
25 Department of Justice shall ascertain the information  
26 required pursuant to this subdivision within three  
27 working days. If the Department of Justice cannot  
28 ascertain the information required pursuant to this  
29 subdivision within three working days, the department  
30 shall notify the employer designated by the applicant  
31 submitting the fingerprints that it cannot so ascertain the  
32 required information. This notification shall be delivered  
33 by telephone and shall be confirmed in writing and  
34 delivered to the employer designated by the applicant  
35 submitting the fingerprints by first-class mail. If the  
36 employer designated by the applicant submitting the  
37 fingerprints is notified by the Department of Justice that  
38 it cannot ascertain the required information about a  
39 person, the employer may not employ that person until  
40 the Department of Justice ascertains that information. At

1 its discretion, the Department of Justice may forward one  
2 copy of the fingerprint cards submitted to any other  
3 bureau of investigation it may deem necessary in order to  
4 verify any record of previous arrests or convictions of the  
5 applicant.

6 (d) An employer shall not employ a person until the  
7 Department of Justice completes its obligations as set  
8 forth in this section.

9 (e) (1) A person, firm, association, partnership, or  
10 corporation offering or conducting private school  
11 instruction on the elementary or high school level shall  
12 not employ a person who has been convicted of a violent  
13 or serious felony or a person who would be prohibited  
14 from employment by a public school district pursuant to  
15 any provision of this code because of his or her conviction  
16 for any crime.

17 (2) A person who would be prohibited from  
18 employment by a private school pursuant to paragraph  
19 (1) may not, on or after July 1, 1999, own or operate a  
20 private school offering instruction on the elementary or  
21 high school level.

22 (f) This section applies to any violent or serious offense  
23 which, if committed in this state, would have been  
24 punishable as a violent or serious felony.

25 (g) For purposes of this section, a violent felony is any  
26 felony listed in subdivision (c) of Section 667.5 of the  
27 Penal Code and a serious felony is any felony listed in  
28 subdivision (c) of Section 1192.7 of the Penal Code.

29 (h) Notwithstanding subdivision (e), a person shall  
30 not be denied employment or terminated from  
31 employment solely on the basis that the person has been  
32 convicted of a violent or serious felony if the person has  
33 obtained a certificate of rehabilitation and pardon  
34 pursuant to Chapter 3.5 (commencing with Section  
35 4852.01) of Title 6 of Part 3 of the Penal Code.

36 (i) Notwithstanding subdivision (e), a person shall not  
37 be denied employment or terminated from employment  
38 solely on the basis that the person has been convicted of  
39 a serious felony that is not also a violent felony if that  
40 person can prove to the sentencing court of the offense



1 in question, by clear and convincing evidence, that he or  
2 she has been rehabilitated for the purposes of school  
3 employment for at least one year. If the offense in  
4 question occurred outside this state, then the person may  
5 seek a finding of rehabilitation from the court in the  
6 county in which he or she is a resident.

7 (j) The Commission on Teacher Credentialing shall  
8 send on a monthly basis to each private school a list of all  
9 teachers who have had their state teaching credential  
10 revoked or suspended. The list shall be identical to the list  
11 compiled for public schools in the state. The commission  
12 shall also send on a quarterly basis a complete and  
13 updated list of all teachers who have had their teaching  
14 credentials revoked or suspended, excluding teachers  
15 who have had their credentials reinstated, or who are  
16 deceased.

17 (k) The Department of Justice may charge each  
18 applicant for a criminal record summary a reasonable fee  
19 to cover costs associated with the processing, reviewing,  
20 and supplying of the criminal record summary as  
21 required by this section. In no event shall the fee exceed  
22 the actual costs incurred by the department.

23 SEC. 2. Section 44237 of the Education Code is  
24 amended to read:

25 44237. (a) Every person, firm, association,  
26 partnership, or corporation offering or conducting  
27 private school instruction on the elementary or high  
28 school level shall require each applicant for employment  
29 in a position requiring contact with minor pupils who  
30 does not possess a valid credential issued by the  
31 Commission on Teacher Credentialing or is not currently  
32 licensed by another state agency that requires a criminal  
33 record summary that directly relates to services provided  
34 in a facility described in this section and has background  
35 clearance criteria that meets or exceeds the requirements  
36 of this section, to submit two sets of fingerprints prepared  
37 for submittal by the employer to the Department of  
38 Justice for the purpose of obtaining criminal record  
39 summary information from the Department of Justice  
40 and the Federal Bureau of Investigation.

1 (b) (1) As used in this section, “employer” means  
2 every person, firm, association, partnership, or  
3 corporation offering or conducting private school  
4 instruction on the elementary or high school level.

5 (2) As used in this section, “employment” means the  
6 act of engaging the services of a person, who will have  
7 contact with pupils, to work in a position at a private  
8 school at the elementary or high school level on or after  
9 September 30, 1997, on a regular, paid full-time basis,  
10 regular, paid part-time basis, or paid full- or part-time  
11 seasonal basis.

12 (3) As used in this section, “applicant” means any  
13 person who is seriously being considered for employment  
14 by an employer.

15 (4) This section does not apply to a secondary school  
16 pupil working at the school he or she attends or a parent  
17 ~~or legal guardian working with his or her child in a home~~  
18 ~~study program.~~ *or legal guardian working exclusively*  
19 *with his or her child or children.*

20 (c) (1) Upon receiving the identification cards, the  
21 Department of Justice shall ascertain whether the  
22 applicant has been arrested or convicted of any crime  
23 insofar as that fact can be ascertained from information  
24 available to the department and forward the information  
25 to the employer submitting the fingerprints no more than  
26 15 working days after receiving the identification cards.  
27 The Department of Justice shall not forward information  
28 regarding criminal proceedings that did not result in a  
29 conviction but shall forward information on arrests  
30 pending adjudication.

31 (2) Upon implementation of an electronic  
32 fingerprinting system with terminals located statewide  
33 and managed by the Department of Justice, the  
34 Department of Justice shall ascertain the information  
35 required pursuant to this subdivision within three  
36 working days. If the Department of Justice cannot  
37 ascertain the information required pursuant to this  
38 subdivision within three working days, the department  
39 shall notify the employer submitting the fingerprints that  
40 it cannot so ascertain the required information. This

1 notification shall be delivered by telephone or electronic  
2 mail to the employer submitting the fingerprints. If the  
3 employer submitting the fingerprints is notified by the  
4 Department of Justice that it cannot ascertain the  
5 required information about a person, the employer may  
6 not employ that person until the Department of Justice  
7 ascertains that information.

8 (3) The Department of Justice shall review the  
9 criminal record summary it obtains from the Federal  
10 Bureau of Investigation to ascertain whether an applicant  
11 for employment has a conviction, or an arrest pending  
12 final adjudication, for any sex offense, controlled  
13 substance offense, crime of violence, or serious or violent  
14 felony. The Department of Justice shall provide written  
15 notification to the private school employer only as to  
16 whether an applicant for employment has any  
17 convictions, or arrests pending final adjudication, for any  
18 of these crimes.

19 (d) An employer shall not employ a person until the  
20 Department of Justice completes its check of the state  
21 criminal history file as set forth in this section.

22 (e) (1) A person, firm, association, partnership, or  
23 corporation offering or conducting private school  
24 instruction on the elementary or high school level shall  
25 not employ a person who has been convicted of a violent  
26 or serious felony or a person who would be prohibited  
27 from employment by a public school district pursuant to  
28 any provision of this code because of his or her conviction  
29 for any crime.

30 (2) A person who would be prohibited from  
31 employment by a private school pursuant to paragraph  
32 (1) may not, on or after July 1, 1999, own or operate a  
33 private school offering instruction on the elementary or  
34 high school level.

35 (f) An employer shall request subsequent arrest  
36 service from the Department of Justice as provided under  
37 Section 11105.2 of the Penal Code.

38 (g) This section applies to any violent or serious  
39 offense which, if committed in this state, would have been  
40 punishable as a violent or serious felony.

1 (h) For purposes of this section, a violent felony is any  
2 felony listed in subdivision (c) of Section 667.5 of the  
3 Penal Code and a serious felony is any felony listed in  
4 subdivision (c) of Section 1192.7 of the Penal Code.

5 (i) Notwithstanding subdivision (e), a person shall not  
6 be denied employment or terminated from employment  
7 solely on the basis that the person has been convicted of  
8 a violent or serious felony if the person has obtained a  
9 certificate of rehabilitation and pardon pursuant to  
10 Chapter 3.5 (commencing with Section 4852.01) of Title  
11 6 of Part 3 of the Penal Code.

12 (j) Notwithstanding subdivision (e), a person shall not  
13 be denied employment or terminated from employment  
14 solely on the basis that the person has been convicted of  
15 a serious felony that is not also a violent felony if that  
16 person can prove to the sentencing court of the offense  
17 in question, by clear and convincing evidence, that he or  
18 she has been rehabilitated for the purposes of school  
19 employment for at least one year. If the offense in  
20 question occurred outside this state, then the person may  
21 seek a finding of rehabilitation from the court in the  
22 county in which he or she is a resident.

23 (k) The Commission on Teacher Credentialing shall  
24 send on a monthly basis to each private school a list of all  
25 teachers who have had their state teaching credential  
26 revoked or suspended. The list shall be identical to the list  
27 compiled for public schools in the state. The commission  
28 shall also send on a quarterly basis a complete and  
29 updated list of all teachers who have had their teaching  
30 credentials revoked or suspended, excluding teachers  
31 who have had their credentials reinstated, or who are  
32 deceased.

33 (l) The Department of Justice may charge a  
34 reasonable fee to cover costs associated with the  
35 processing, reviewing, and supplying of the criminal  
36 record summary as required by this section. In no event  
37 shall the fee exceed the actual costs incurred by the  
38 department.

39 (m) Where reasonable access to the statewide,  
40 electronic fingerprinting network is available, the



1 Department of Justice may mandate electronic  
2 submission of the fingerprints and related information  
3 required by this section.

4 (n) All information obtained from the Department of  
5 Justice is confidential. Agencies handling Department of  
6 Justice information shall ensure the following:

7 (1) No recipient shall disclose its contents or provide  
8 copies of information.

9 (2) Information received shall be stored in a locked file  
10 separate from other files, and shall only be accessible to  
11 the custodian of records.

12 (3) Information received shall be destroyed upon the  
13 hiring determination in accordance with subdivision (a)  
14 of Section 708 of Title 11 of the California Code of  
15 Regulations.

16 (4) Compliance with destruction, storage,  
17 dissemination, auditing, backgrounding, and training  
18 requirements as set forth in Sections 700 through 708,  
19 inclusive, of Title 11 of the California Code of Regulations  
20 and Section 11077 of the Penal Code governing the use  
21 and security of criminal offender record information is  
22 the responsibility of the entity receiving the information  
23 from the Department of Justice.

24 SEC. 3. Section 2 of this bill incorporates amendments  
25 to Section 44237 of the Education Code proposed by both  
26 this bill and AB 2102. It shall only become operative if (1)  
27 both bills are enacted and become effective on or before  
28 January 1, 1999, (2) each bill amends Section 44237 of the  
29 Education Code, and (3) this bill is enacted after AB 2102,  
30 in which case Section 44237 of the Education Code as  
31 amended by AB 2102, shall remain operative only until  
32 the operative date of this bill, at which time Section 2 of  
33 this bill shall become operative, and Section 1 of this bill  
34 shall not become operative.

